89-422

No. _____

Supreme Court, U.S.
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CLERK

In The

Supreme Court of the United States

October Term, 1989

SANDRA WILLIAMS,

Petitioner,

vs.

JOHN HEALEY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals for the Second Circuit err when it imposed a drastic seventy-five percent reduction of attorney's fees requested by a prevailing civil rights appellee without comment or explanation?

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No. _____

In The

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October Term, 1989

SANDRA WILLIAMS,

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vs.

JOHN HEALEY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Sandra Williams, Petitioner, requests that a writ of certiorari issue to review the order of the United States Court of Appeals for the Second Circuit entered April 28, 1989, on which a Petition for Rehearing was denied by a panel of the Court of Appeals on June 12, 1989 and a suggestion for rehearing *en banc* contained therein was unsuccessful.

ORDER BELOW

The order of the Court of Appeals for the Second Circuit is a margin order dated April 28, 1989. (Hon. William H. Timbers, Thomas J. Meskill, Jon O. Newman U.S.C.J.J.). It is reproduced in the Appendix to this Petition at App. p. 1. A timely petition for rehearing with a suggestion for rehearing by the members of the court convened *en banc* was denied on June 12, 1989, and that order is reproduced in the Appendix to this Petition beginning at App. p. 2.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 1988 of Title 42 of the United States Code provides that in federal civil rights actions or proceedings, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

STATEMENT OF THE CASE

The Petitioner, Sandra Williams, brought suit against the Respondent, John Healey, pursuant to 42 U.S.C. § 1983. She alleged that the Respondent, a police officer for the City of New Haven, Connecticut, discriminated

against her on account of her race and falsely arrested her thus depriving her of rights guaranteed to her by the Fourth and Fourteenth Amendments to the United States Constitution. Suit was brought in the United States District Court for the District of Connecticut. This cause went to trial before a jury with the Hon. Warren W. Eginton, U.S.D.J., presiding.

The jury returned a verdict in favor of the plaintiff, the Petitioner herein, and against the defendant and awarded her $1,000 in compensatory damages and $3,000 in punitive damages. The District Court entered judgment accordingly. That judgment is reproduced in the Appendix to this Petition at App. p. 4.

After the entry of judgment, Petitioner moved the District Court for an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and requested the Court to grant counsel $125 per hour as a reasonable attorneys' fee given the background, experience and other qualifications of trial counsel. The District Court granted plaintiff's counsel's application in full and awarded the requested "lodestar". The district court did, however, later modify its award by $80 at the request of defendant's counsel. With that minor modification, the District Court finally awarded the Petitioner herein the sum of $9,775.50. That award is reproduced at App. pp. 5-6.

The Respondent herein thereafter brought a timely appeal to the United States Court of Appeals for the Second Circuit and raised several issues on review. Counsel for the parties appeared in New York City for a pre-argument conference in accordance with the rules of the Second Circuit, submitted briefs and thereafter appeared

for oral argument before the Court. The Court of Appeals thereafter rejected all claims on appeal and affirmed the judgment of the district court below in all respects. That decision is reproduced beginning at App. p. 9. As the prevailing party on appeal, the Petitioner thereafter filed an application with the Court of Appeals for an award of attorney's fees and costs pursuant to 42 U.S.C. § 1988 and under the standards announced by this Court.

Along with the application, counsel for the prevailing party submitted a memorandum of law, an affidavit of counsel setting forth her qualifications, experience and a thorough and detailed description of all work performed and hours expended in her successful defense of this appeal. In addition, in accordance with the stated requirement of this Court and by its decisions and those of the Court of Appeals below, Petitioner's counsel included in the application detailed, accurate and contemporaneously prepared time records for all time expended. The Petitioner sought $11,400 for attorney fees and $116.61 as reimbursement for other costs. Petitioner's counsel requested an hourly rate of $125 which was the same hourly rate requested and granted by the District Court below. The bulk of the services performed and the vast majority of the hours expended were attributable to trial counsel with some 11 hours expended by a partner of the firm.

By a margin order dated April 28, 1989, the Court of Appeals ordered that the "[p]laintiff-appellee shall recover attorney fees of $3,000 (three thousand dollars), plus costs of $116.61 (one hundred sixteen and sixty-one cents) from the appellant." The court made no further

comment and gave no explanation for the denial of nearly 75% of the requested fees.

Sandra Williams thereafter petitioned the Court of Appeals for a rehearing of this matter on the grounds that the Court, by its order, violated clearly established law in ordering a wholesale reduction of the requested attorney fees without comment or explanation or even an indication of a reasoned review. The Petition for rehearing contained a suggestion that the matter be considered on rehearing by all the judges of the Court of Appeals convened *en banc*. In said petition, it was noted to the Court that the Respondent, by his opposition to the Application, did not contend with the requested hourly rate for trial counsel in her defense of the appeal nor with the majority of the documented hours expended.

On June 12, 1989, the petition for rehearing was denied and the suggestion for rehearing *en banc* met with no response. App. p. 2.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Directly Conflicts With Prior Holdings Of This Court.

In *Hensley v. Eckerhart*, 461 U.S. 457, 103 S.Ct. 1933 (1983), and in numerous subsequent decisions, this Court has reaffirmed the general standards to be employed by courts in reviewing and deciding attorney fee awards pursuant to 42 U.S.C. § 1988 and other fee shifting provisions. In *Hensley*, this Court stated that a prevailing party

in a civil rights action should ordinarily recover attorney's fees "unless special circumstances would render such an award unjust." 461 U.S. at 429, 103 S.Ct. at 1937. Again, in *Blum v. Stenson*, 465 U.S. 886, 104 S.Ct. 1541 (1984), this Court approved the established "lodestar" approach – the multiplication of the number of hours reasonably expended on litigation by a reasonable hourly rate – with appropriate guidance by notice of prevailing rates in the community for similar work performed by attorneys of comparable standing and skill. 465 U.S. at 895 n.11, 104 S.Ct. 1547 n.11.

While this Court has often noted the "discretionary" nature of fee determinations, it has clearly indicated that such discretion is circumscribed by the considerations identified and guidelines imposed by this Court. *Hensley, supra*, at 437, 103 S.Ct. at 1933. Over six years ago, this Court declared it essential that a District Court "provide a concise but clear explanation of its reasons for [a] fee award". *Id.* at 437, 103 S.Ct. at 1941. No authority from this Court excuses the failure or refusal of a Court of Appeals to do the same in its decision on the application of a prevailing appellate party. Certainly, the sound reasoning underlying this Court's instruction does not lose force at the appellate level of the federal courts.

In this case, there is no question that the Petitioner complied with stated requirements of the Court by submitting detailed, accurate and contemporaneously prepared time records with adequate descriptions of services performed. It is not here necessary to detail the various considerations this Court has repeatedly identified for use by reviewing courts in granting enhancements or

imposing reductions in the process of determining a "reasonable" fee under § 1988 upon such a submission. Rather, this case presents a situation where the deciding court in one terse phrase ordered a wholesale reduction in the requested award without so much as a rudimentary explanation or comment. This is a far cry from the desired "commendable effort to explain the fee award." *Hensley, supra,* at 438, 103 S.Ct. at 1942.

Indeed the Second Circuit has before recognized the requirement of a reasoned review of and an *articulated* basis for a fee award. *See, e.g., Wells v. Bowen,* 855 F.2d 37, 43 (2d Cir. 1988) (District Court did not engage in any independent analysis of what would constitute a "reasonable" fee award); *Cohen v. West Haven Board of Police Commissioners,* 638 F.2d 496, 505 (2d Cir. 1980) (if court reduces lodestar figure, it must state its reasons for doing so).

Thus, the Court of Appeals in the instant case has treated a civil rights fee application in a manner which it would not tolerate at the District Court level.

Other Circuit Courts of Appeals have acknowledged and adhered to the "concise but clear" explanation requirement of *Hensley* and its progeny. *See, e.g., Cunningham v. County of Los Angeles,* 869 F.2d 427, 431 (9th Cir. 1988)(although elaborate mathematical equations are unnecessary courts "must provide sufficient insight into their exercises of discretion"); *Norman v. Housing Authority of City of Montgomery,* 836 F.2d 1292, 1304 (11th Cir. 1988)(Court must engage in meaningful review, articulate its decision and give principled reasons for disallowance of claimed hours). *See also Copper Liquor, Inc. v. Aldoph*

Coors Co., 684 F.2d 1087, 1101-1102 (5th Cir. 1982); *Environmental Defense Fund v. EPA*, 672 F.2d 42 (D.C.Cir.1982). As the Ninth Circuit has noted, "detailed calculations may not be necessary," but "something more than a bald, unsupported amount is necessary". *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986).

Clearly, what is here presented is a "bald, unsupported amount" without a shred more to aid anyone in an understanding of this award. It not only fails to answer the question of what is "reasonable", it is, by its very nature, unreasonable. Since the order below flies directly in the face of prior holdings of this Court, a writ should issue.

2. The Decision Below, Which Effectively Vitiated the Petitioner's Judgment, Undermines the Very Purpose of the Civil Rights Fee Act and Such Practice, If Allowed to Continue, Threatens the Ability of Civil Rights Plaintiffs to Secure Willing and Competent Counsel.

There exist additional and compelling public policy reasons for granting the Writ. Time and again, this Court has discussed and affirmed the Congressional intent of 42 U.S.C. § 1988: to ensure "effective access to the judicial process for persons with civil rights grievances." *Hensley, supra*, at 429, 103 S.Ct. at 1937 *citing* H.R.Rep. No. 94-1558, p.1 (1976). As the concurring justices in *Hensley* noted:

> In many cases arising under our civil rights laws the citizen who must sue to enforce the law has little or no money to hire a lawyer. If private citizens are to be able to assert their civil rights,

> and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must recover what it costs them to vindicate these rights in Court.

Id. at 445, 103 S.Ct. at 1945 *citing* S.Rep. No. 94-1011, p.2 (1976).

Thus, "no fee is reasonable unless it would be adequate to induce other attorneys to represent similarly situated clients seeking relief comparable to that obtained in the case at hand. *Id.* at 449, 103 S.Ct. at 1948; *see also Pennsylvania v. Delaware Valley Citizens' Council*, 478 U.S. 546, 565, 106 S.Ct. 3088, 3098 (1986)(same).

The petitioner herein was the victim of a false arrest; the jury, indeed, found the defendant's behavior to warrant the imposition of punitive damages in addition to a grant of compensatory damages. While it is true that the total judgment was a modest $4000, this is often the case in actions involving a deprivation of constitutional rights without significant special damages and in the absence of additional physical injury.

"Civil rights claims of small cash value nevertheless have . . . social value . . . " *Ustrak v. Fairman*, 851 F.2d 983, 989 (7th Cir. 1988). The Petitioner's achievement is the desire of all civil rights grievants with meritorious claims – a vindication of the rights one holds as a citizen of this Nation. This is so because the vindication for Sandra Williams "is a deterrent to future violations, to the benefit not only of [Williams], but of others in similar situations." *Id. citing Aubin v. Fudala*, 782 F.2d 287, 291 (1st Cir. 1986).

Ms. Williams did not bring the appeal; the losing defendant did. She of course needed counsel to defend

her judgment. She prevailed on every one of the issues on review brought to the Second Circuit, which found all of the defendant's claims to be wholly without merit. Yet, with the drastic reduction of requested fees to the Petitioner for the successful defense of her judgment, the Court of Appeals has handed her only a Pyrrhic victory.

Counsel of record on appeal recorded and requested compensation for a total of 70.4 hours expended in connection with all aspects of the appeal. The requested hourly rate of $125 was the same rate determined by the District Court below to constitute a market-based, reasonable fee. With an additional thirteen hours expended and recorded by one of the law firm's partners, the total amount of attorney's fees incurred by the Petitioner was $11,400. By its margin order of the round sum of $3000, the Court of Appeals engaged in a "bobtail procedure" with the "figure seemingly picked out of thin air".[1]

By its unexplained wholesale denial of the Petitioner's request, the Court of Appeals has, in effect, totally vitiated the judgment in her favor. Worse yet, the Petitioner is indeed placed in a position worse than that she held prior to bringing the action in the first place. The defendant not only succeeded in making Williams pay for her own judgment, but he also caused her to actually incur debt for prevailing in a civil rights case. The only alternative is for appellate counsel to forego the bulk of compensation for hours worked that could easily have been expended on behalf of other more financially able

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[1] 2 M. Derfner and A. Wolf, *COURT AWARDED ATTORNEY FEES* ¶ 18.05 at pp.18-51, 52 nn. 37, 42 (1988) (citations omitted).

clients. The placement of counsel in such a dilemma is the precise roadblock to civil rights vindication that Congress and this Court have expressly sought to eliminate.

Wholesale elimination of reasonable appellate fees removes the incentive for counsel to take and litigate cases which do not carry promise of large monetary award, but which instead now carry the risk of total vitiation of any recovery by the simple defense tactic of meritless appeal to the Second Circuit. With these important considerations at hand, it stands as reason that the Court of Appeals should be made to discharge the same obligation that it imposes on the District Courts below.

CONCLUSION

For all of the above reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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SEPTEMBER 11, 1989

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WILLIAMS	)	Docket No. 88-7927
VS.	)	**NOTICE OF MOTION**
HEALEY	)	for *APPLICATION FOR AWARD OF ATTORNEYS' FEES AND COSTS*

O R D E R

IT IS HEREBY ORDERED that the motion be and it hereby is granted.

Plaintiff-appellee shall recover attorneys' fees of $3,000 (three thousand dollars), plus costs of $116.61 (one hundred sixteen dollars and sixty-one cents) from the appellant.

/s/ _____
Williams H. Timbers, U.S.C.J.

/s/ _____
Thomas J. Meskill, U.S.C.J.

/s/ _____
Jon O. Newman, U.S.C.J.
(by TJM)

DATED: April 28, 1989

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 12th day of June, one thousand nine hundred and eighty-nine.

SANDRA WILLIAMS,

PLAINTIFF-APPELLEE,

V.

JOHN HEALEY,

DEFENDANT-APPELLANT

DOCKET NUMBER

88-7927

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by plaintiff-appellee Sandra Williams.

Upon consideration by the panel that heard the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard

the appeal and that no such judge has requested that a vote be taken thereon.

/S/ _____
ELAINE B. GOLDSMITH
Clerk

DATED/FILED: June 12, 1989

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SANDARA WILLIAMS

v.

JOHN HEALEY, Individually and in his Official Capacity as an Officer In the Police Department of New Haven Connecticut.

CIVIL NO. N-87-113 (WWE)

JUDGMENT

This action came on for trial before the Court and a jury, the Honorable Warren W. Eginton, United States District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict.

It is ORDERED and ADJUDGED that judgment be, and hereby is, entered for the plaintiff as against the defendant John Healey in the amount of $1,000.00 in compensatory damages and in the amount of $3,000.00 in punitive damages.

Dated at Bridgeport, Connecticut this 29th day of September, 1988.

KEVIN R. ROWE, Clerk

By /s/ _____

Carol E. Cannady
Deputy in Charge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SANDRA WILLIAMS	:	
VS.	:	CIVIL NO. N-87-113 (WWE)
JOHN HEALEY	:	NOVEMBER 2, 1988

APPLICATION FOR AWARD OF ATTORNEYS' FEES AND COSTS

Pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 1983, plaintiff's counsel, as counsel for the prevailing party, hereby moves this Court to determine reasonable attorneys' fees and costs to be paid by the defendant in this action. Such an award is to be made for the following reasons:

1. The plaintiff filed an action pursuant to 42 U.S.C. §§ 1983 and 1988 complaining that she had been falsely arrested by the defendant.

2. The jury was selected on August 29, 1988, and the trial began on September 26, 1988. On September 28, 1988, the jury rendered the verdict in favor of the plaintiff and against the defendant John Healey.

3. The jury awarded the plaintiff compensatory damages in the amount of $1,000.00 and further awarded the plaintiff punitive damages in the amount of $3,000.00.

4. The adjudication that the plaintiff's civil rights had been violated, together with the award of damages includ- [sic]

ORDER: *September 5, 1988*: Absent timely objection, the request for attorney's fees and costs is GRANTED. The plaintiff is hereby awarded $9,855.50 in attorney's

fees and costs. This sum represents the following: for Attorney John Williams, 3.8 hours at $175.00 per hour; for Attorney Jeffrey Drewniany, 1.5 hours at $125.00 per hour; and for Attorney Karen Torre, 70.4 hours at $125.00 per hour. This sum also includes costs and fees of $203.00.

/s/ _____
WARREN W. EGINTON, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SANDRA WILLIAMS	:	
PLAINTIFF	:	
VS.	:	CIVIL ACTION NO. N-87-113 (WWE)
JOHN HEALEY	:	
DEFENDANT	:	DECEMBER 9, 1988

MOTION FOR RECONSIDERATION CONCERNING DEFENDANT'S APPLICATION FOR ATTORNEYS' FEES AND COSTS

ORDER:

January 5, 1989: Upon reconsideration, the request for attorney's fees and costs is GRANTED with the following modification: The plaintiff is awarded $9,775.50 in attorney's fees and costs. This figure reflects a reduction of costs from $203.00 to $123.00. *See* Defendant's Motion for Reconsideration (filed Dec. 9, 1988) at 3. The Court finds that the lodestar amount previously computed reflects a number of hours reasonably spent on the case at reasonable hourly rates. *See DiFilippo v. Morizio*, 759 F.2d 231, 234 (2d Circuit 1985). The Court rejects the defendant's suggestion that plaintiff has only partially prevailed because the Court declined her proposed First Amendment charge. Here, both of plaintiff's theories for relief were based upon one overall "common core of facts,"

thus making a reduction of fees unnecessary. *See Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

/s/ _____
WARREN W. EGINTON, U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the Fifteenth day of March, one thousand nine hundred and eighty-nine.

Present:
HONORABLE WILLIAM H. TIMBERS,
HONORABLE THOMAS J. MESKILL,
HONORABLE JON O. NEWMAN,
Circuit Judges.

SANDRA WILLIAMS, *PLAINTIFF-APPELLEE,* V. JOHN HEALEY, Individually and in his Official Capacity as an Officer in the Police Department of New Haven, Connecticut, *DEFENDANT-APPELLANT*	Docket No. 88-7927 Filed: 3/15/89

This is an appeal from a jury verdict entered in the United States District Court for the District of Connecticut, Eginton, *J.*, finding appellant Healey liable for compensatory and punitive damages under 42 U.S.C. § 1983.

This cause came on to be heard on the transcript of record from said district court and was argued by counsel.

The judgment of the District Court is AFFIRMED.

ISSUED AS MANDATE: 4-7-89

Appellee Williams filed suit against Police Officer Healey alleging that he had violated her constitutional rights by arresting her without probable cause. After a jury verdict was returned in Williams' favor, Healey appealed. He argues that the District Court judge improperly instructed the jury in several ways. His primary contention is that the instructions erroneously stated that the violation of Conn. Gen. Stat. Ann. § 53a-182, Disorderly Conduct, must take place in public. He also alleges, *inter alia*, that the judge should not have included a passage from an opinion of the Appellate Session of the Connecticut Superior Court in the jury instructions.

We find Healey's contentions to be without merit. The inclusion in the charge of two examples, one of which involved an incident in a public place for which the judge said probable cause to arrest for disorderly conduct might have been present, and one of which was set in a private place for which the judge said probable cause might not have been present, did not render the charge unduly prejudicial. Taken as a whole, *see Peolillo v. Dresser Industries, Inc.*, 865 F.2d 37, 40 (2d Cir. 1989), the charge adequately and accurately instructed the jury on the elements of disorderly conduct.

Nor was it incorrect for the District Court to refuse to charge the jury that the lobby of a hotel is a public place. Whether a place is public under either the breach of the peace or the disorderly conduct statute is a question of fact for the jury to decide. *See State v. Duhan*, 194 Conn. 247, 359-60 (1984)(whether "all the relevant circumstances

of time and place and complainant" added up to "unreasonable noise" within the meaning of the disorderly conduct statute was a question for jury). The Connecticut statutes explicitly state that "public" is not defined because its interpretation should be worked out on a "case by case basis." Conn. Gen. Stat. Ann. Title 53a, Pt. XIV Commission Comment - 1971.

Finally, it was not error for the Court to use a part of the opinion in *State v. Nelson*, 38 Conn. Supp. 349 (App. Sess. Super. Ct. 1982), in its charge. The portion of the charge that came from *Nelson* was not unduly complicated or confusing, and is not grounds for reversal. The instructions, taken as a whole, were readily understandable.

We have considered appellant Healey's other contentions and find them to be without merit.

/s/ _____
William H. Timbers, U.S.C.J.

/s/ _____
Thomas J. Meskill, U.S.C.J.

/s/ _____
Jon O. Newman, U.S.C.J.